

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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ASSURANCE COMPANY OF
AMERICA,

Plaintiff,

v.

CAMPBELL CONCRETE OF NEVADA,
INC., et al.,

Defendants.

2:11-CV-00559-PMP-CWH

ORDER

Before the Court is Defendants' Motion in Limine No. 2 to Exclude Any Evidence Regarding Any Impropriety in the Corporate Structure of the Defendant Entities (Doc. #103). Plaintiff filed an Opposition (Doc. #111). Also before the Court is Defendants' Motion in Limine No. 3 to Exclude Any Evidence that the Defendant Corporations Were Not Property Dissolved (Doc. #104). Plaintiff filed an Opposition (Doc. #109).

Defendants move to exclude any evidence or argument that there was some impropriety in the way the dissolved corporations were structured, sold, or dissolved. Defendants argue there is no evidence these entities were improperly structured, sold, or dissolved without providing for liabilities owed at the time of dissolution. Defendants argue the dissolved corporations provided for any debts owed through the sale of assets to BMHC and BMHC had substantial assets at the time of sale. Additionally, Defendants note that the Court already has ruled Steven Campbell is not liable as the president, director, or

1 shareholder of the dissolved corporations. Defendants also move to exclude argument or
2 evidence that Defendants did not properly dissolve because they failed to notify Assurance
3 of the dissolution. Defendants argue neither California nor Nevada law require a
4 corporation to notify its creditors prior to dissolution.

5 Plaintiff responds by arguing that the Policies at issue do not allow a transfer of
6 the insured's obligations without Plaintiff's written consent. Plaintiff argues it never gave
7 consent for Defendants to transfer their obligations under the Policies to BMHC. Plaintiff
8 contends that because it was a known creditor at the time of dissolution, Defendants were
9 obligated under the law to notify Plaintiff of their dissolution prior to dissolving, and to
10 adequately provide for their obligations to Plaintiff. Plaintiff contends there is no issue of
11 fact that Defendants did not notify Plaintiff pre-dissolution, and factual questions remain for
12 the jury as to whether Defendants adequately provided for their obligations to Plaintiff.
13 Plaintiff argues that if Defendants did not meet these requirements for dissolution, the
14 dissolutions are void as to creditors like Plaintiff whose rights are prejudiced.

15 As an initial matter, nothing in Defendants' two Motions seeks to preclude
16 Plaintiff from arguing that Defendants could not transfer any liabilities under the Policies to
17 BMHC pursuant to the contractual clause that prohibits transfers without Plaintiff's written
18 consent. Consequently, whether Plaintiff consented to transfer of the obligations under the
19 Policies remains a live issue for trial.

20 However, whether the corporations "properly" dissolved is not relevant to any
21 issue remaining for trial. This Court already ruled that Steven Campbell has no liability as a
22 director or shareholder of the dissolved corporations. (Order (Doc. #43) at 7-10.)
23 Plaintiff's Motion essentially seeks reconsideration of that ruling, as Plaintiff contends that
24 if the corporate Defendants did not "properly" dissolve, then Plaintiff may obtain judgment
25 against Steven Campbell as director or shareholder of the dissolved entities. The Court
26 declines to reconsider its prior ruling.

1 At common law, a corporation's dissolution immediately extinguished any claims
2 by or against a corporation. Beazer Homes Nev., Inc. v. Eighth Judicial Dist. Ct. ex rel.
3 Cnty. of Clark, 97 P.3d 1132, 1136 (Nev. 2004). This led to unjust results, and
4 consequently courts reacted by judicially creating a "trust fund" theory which imposed a
5 fiduciary duty on directors to ensure corporate debts were paid, and shareholders held any
6 distributed corporate assets subject to an equitable lien against unpaid claims. Id. State
7 legislatures also reacted by enacting survival statutes which statutorily extended the life of
8 the corporation to wind up its affairs. Id. These statutes sought to "balance the
9 corporation's rights to finalize its business, the creditor's rights to be paid amounts due, the
10 shareholder's rights to receive distributions free of claims, and the claimant's rights to be
11 paid for legitimate harm caused by the corporation." Id.

12 Many states adopted the Model Business Corporations Act, but Nevada adopted
13 only part of the Act. Nevada did not adopt those provisions requiring a dissolving
14 corporation to notify its creditors of dissolution. Id. at 1137 & n.24 (suggesting the
15 proponents of Nevada's dissolution statute "failed to advise the Legislature that Section 105
16 was part of a larger scheme. Consequently, the Legislature did not enact the notice
17 proceedings required by other portions of the 1969 Model Act, a key feature necessary to
18 the rationale behind the proper operation of Section 105"). Although Nevada amended its
19 corporate dissolution statute in 2011, it did not add a requirement that the dissolving
20 corporation notify creditors. See Nev. Laws 2011, c. 455 (S.B. 405). California likewise
21 does not have a specific statutory provision requiring a dissolving corporation to notify its
22 creditors of dissolution.

23 No Nevada or California court has implied a duty to notify. A District of
24 Minnesota case interpreting Nevada law, Soo Line R. Co. v. B.J. Carney & Co., held that
25 there is an implied duty under Nevada law to notify creditors of dissolution. 797 F. Supp.
26 1472, 1478 (D. Minn. 1992). Soo Line further held that failure to follow the dissolution

1 requirements, including the implied duty to notify and the express duty to adequately
2 provide for liabilities, “voids the dissolution as to creditors whose rights have been
3 prejudiced thereby.” Id. Soo Line cited other cases which have reached similar results,
4 although those states had explicit statutory notice requirements. See, e.g., Mejia v. Ruiz,
5 985 So.2d 1109, 1114 (Fla. Ct. App. 2008) (discussing requirements in the context of a
6 fraudulent transfer action); Univ. of Alaska v. Thomas Architectural Prods., Inc., 907 P.2d
7 448, 453 (Alaska 1995) (holding provision abating claims against dissolved corporation
8 after two years does not bar claims by a known creditor who the corporation failed to
9 notify); Alpine Prop. Owners Ass’n., Inc. v. Mountaintop Dev. Co., 365 S.E.2d 57, 64-65
10 (W. Va. 1987) (holding creditor was prejudiced by corporation’s failure to comply with
11 statutory notice requirement because creditor was unaware the limitations period was
12 running, and consequently the corporation’s “de jure corporate dissolution is void as to [the
13 creditor] and [the creditor’s] claims are not barred by the two-year limitation period”); S.C.
14 Dep’t of Soc. Servs. v. Winyah Nursing Homes, Inc., 320 S.E.2d 464, 468 (S.C. Ct. App.
15 1984) (“Failure to strictly comply with the mandates of the dissolution statutes effectively
16 continues the corporation with respect to creditors whose rights are prejudiced by the
17 noncompliance.”).

18 Neither California nor Nevada statutorily require notice, and neither state
19 statutorily provides that failure to follow the statutory requirements for dissolution makes
20 dissolution void as to a creditor prejudiced thereby. To reach the result proposed by
21 Plaintiff, the Court would have to imply a notice requirement, imply the remedy that failure
22 to comply makes the dissolution void as to a prejudiced creditor, and further imply that a
23 trustee who failed in his wind up obligations and/or a shareholder who received distributed
24 assets are liable to the prejudiced creditor beyond the limitations periods set forth in the
25 statutes. As discussed in the Court’s prior Order, the California and Nevada statutes set
26 forth the liability of directors and shareholders of dissolved corporations. If those

1 provisions create unjust results, the state legislatures, not this Court, must make any
2 changes.

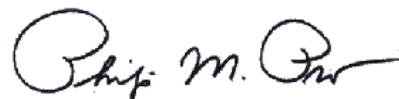
3 As a result, whether the corporate Defendants “properly” dissolved is no longer a
4 relevant issue in this case. Because none of the corporate Defendants have asserted a
5 statute of limitations defense, whether they “properly” dissolved is irrelevant as to their
6 potential liability. Further, because Steven Campbell is not liable as a director and
7 shareholder of the dissolved corporations, as explained more fully in this Court’s prior
8 Order, whether the corporate entities “properly” dissolved is irrelevant to Steven
9 Campbell’s liability as a director or shareholder of the dissolved corporations. Accordingly,
10 Plaintiff is precluded from presenting evidence or argument at trial that the corporate
11 Defendants were not properly dissolved.

12 However, Steven Campbell was the sole proprietor of co-Defendant SRC Sole
13 Proprietorship and the trustee of Defendant Campbell Family Trust. This Order has no
14 bearing on whether Steven Campbell may be liable to Plaintiff in those capacities.

15 IT IS THEREFORE ORDERED that Defendants’ Motion in Limine No. 2 to
16 Exclude Any Evidence Regarding Any Impropriety in the Corporate Structure of the
17 Defendant Entities (Doc. #103) is hereby GRANTED.

18 IT IS FURTHER ORDERED that Defendants’ Motion in Limine No. 3 to
19 Exclude Any Evidence that the Defendant Corporations Were Not Property Dissolved (Doc.
20 #104) is hereby GRANTED.

21
22 DATED: December 3, 2013



23
24 PHILIP M. PRO
United States District Judge